

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4369 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CHARUSHILA HIRALAL TOPIWALA

Versus

GUJARAT STATE FINANCIAL CORPORATION

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Appearance:

MR SH SANJANWALA for Petitioner  
MR KM PATEL for Respondent No. 1  
RULE SERVED for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/08/2000

ORAL JUDGEMENT :

Mr. Sanjanwala for the petitioner is not present even in the second round. Dismissed for default. Rule is discharged.

2. After the aforesaid order was passed, Mr.Sanjanwalla for the petitioner appeared and requested that the matter may be heard on merits. In view of the request, the aforesaid order is recalled.

3. In the present petition, the action on the part of respondents nos.1 to 3 of recovering the amount of House Rent Allowance (HRA) from the gratuity payable to the petitioner is under challenge. It is submitted that the said action of the respondents is not only arbitrary and unreasonable but also unfair and not in accordance with law. The relief sought for is that respondents nos.1 to 3 be directed to pay back the amount of HRA recovered from the gratuity payable to the petitioner. Mr.Sanjanwalla submitted that the petitioner was served with the show cause notice dated 13.7.1987, wherein it is stated that late Shri H.M. Topiwala, husband of the present petitioner was provided with accommodation in Govt. quarters and as such he was not entitled to payment of HRA. It is further stated that despite this during the period from April 1972 to 8.3.1986, late Shri Topiwala received a sum of Rs.33,793.75 HRA from the respondent Corporation, which he was not entitled to. It is also stated in the said notice that as a legal heir, the addressee of that notice had continued to occupy the said Govt. quarter and that the addressee also received a sum of Rs.277.45 as HRA for the period upto September 1986. It is stated in the said notice that said amount is required to be refunded to the Corporation and that the addressee shall explain as to why the said amount should not be recovered. It is submitted by the learned advocate that the said notice was replied by letter dated 29.7.1987, wherein it is stated that after the sad demise of Shri Topiwala, the signatory of the letter was appointed as a Clerk in the Corporation and that he is the only earning member of the family and his take home pay is only Rs.670/- per month. It is further stated in the reply that the mother of the signatory of the reply, i.e. wife of Shri Topiwala, the present petitioner is a heart patient and that large amount is required to be spent on her medical treatment. A request was made to waive the recovery of the amount of HRA. The authorities, by letter dated 6.6.1988 asked the heirs of late Shri Topiwala that the amount be refunded. Thereafter, an order came to be passed on 31.8.1988 and recovery of HRA was adjusted against the amount of gratuity which was payable to late Shri Topiwala.

4. It is this order which is under challenge before this Court in this petition. It is submitted that against that order dated 31.8.1988 an appeal was filed on 25.10.1988 addressed to the Joint General Manager (P&A) of the respondent Corporation. Said appeal was taken into consideration by the Management Board of the Corporation and the appeal was rejected.

5. Mr.Sanjanwala is not able to point out any legal grounds on which decision of the respondent Corporation can be assailed. Except the ground of sympathy to the departed soul and the financial condition of his family. No other ground is urged in support of this petition. Mr.Sanjanwala is not able to point out any legal ground on which the order of the respondent Corporation can be assailed.

6. In the result the petition fails. Dismissed accordingly. Rule is discharged. No order as to costs.

18th August 2000 (Ravi R. Tripathi, J.)

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